

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHERYL F. COHEN

MAILED

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PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Application No. 10/805,935

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on February 21, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

The Information Disclosure Statement dated August 24, 2005 was not considered by the Primary Examiner with respect to compliance with the criteria set forth in 37 CFR §§ 1.97 and 1.98. A written communication notifying appellant of the Primary Examiner's decision is required.

Additionally, the appeal brief filed December 6, 2005, did not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c) (1) (ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the appeal brief filed December 6, 2005:

- 1) "Evidence appendix" as set forth in 37 CFR § 41.37(c) (1) (ix); and
- 2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c) (1) (x).

A supplemental appeal brief in compliance with 37 CFR § 41.37 is required. For more information on the Board's new rules see the web page entitled

"More Information on the Rules of Practice Before the BPAI, Final Rule" at:

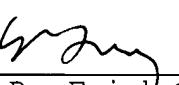
<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Accordingly, it is

ORDERED that the application is electronically returned to the Examiner 1) for consideration of the Information Disclosure Statement; 2) written communication to appellant of such consideration; 3) hold the appeal brief of December 6, 2005 defective; 4) request appellant to file a supplemental appeal brief in compliance with 37 CFR § 41.37 or for the Examiner to submit a statement regarding the position taken on the missing appendices; and 5) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES



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